

ASSEMBLY BILL

No. 896

Introduced by Assembly Member Silva

February 22, 2007

An act to amend Sections 1043, 1045, 1046, and 1047 of the Evidence Code, and to amend Section 832.5 of the Penal Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 896, as introduced, Silva. Public officers: discovery: personnel records.

Existing law requires law enforcement agencies to establish procedures for investigating public complaints against peace and custodial officers and to maintain files regarding those complaints, as specified. Existing law also establishes discovery procedures for obtaining those files for criminal and civil cases.

This bill would additionally require every department or agency that employs certain public officers who are not peace officers but who exercise the powers of arrest, as defined, to establish procedures for investigating public complaints against those officers and to maintain those files in a specified manner. The bill would also apply the existing discovery procedures for obtaining peace officer personnel records to those public officer personnel records.

By imposing additional duties on, among others, local agencies and local prosecuting entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1043 of the Evidence Code is amended
2 to read:
3 1043. (a) In any case in which discovery or disclosure is sought
4 of peace, *public*, or custodial officer personnel records or records
5 maintained pursuant to Section 832.5 of the Penal Code or
6 information from those records, the party seeking the discovery
7 or disclosure shall file a written motion with the appropriate court
8 or administrative body upon written notice to the governmental
9 agency ~~which~~ *that* has custody and control of the records. The
10 written notice shall be given at the times prescribed by subdivision
11 (b) of Section 1005 of the Code of Civil Procedure. Upon receipt
12 of the notice, the governmental agency served shall immediately
13 notify the individual whose records are sought.
14 (b) The motion shall include all of the following:
15 (1) Identification of the proceeding in which discovery or
16 disclosure is sought, the party seeking discovery or disclosure, the
17 peace, *public*, or custodial officer whose records are sought, the
18 governmental agency ~~which~~ *that* has custody and control of the
19 records, and the time and place at which the motion for discovery
20 or disclosure shall be heard.
21 (2) A description of the type of records or information sought.
22 (3) Affidavits showing good cause for the discovery or
23 disclosure sought, setting forth the materiality thereof to the subject
24 matter involved in the pending litigation and stating upon
25 reasonable belief that the governmental agency identified has the
26 records or information from the records.
27 (c) No hearing upon a motion for discovery or disclosure shall
28 be held without full compliance with the notice provisions of this
29 section except upon a showing by the moving party of good cause
30 for noncompliance, or upon a waiver of the hearing by the
31 governmental agency identified as having the records.

1 SEC. 2. Section 1045 of the Evidence Code is amended to read:

2 1045. (a) Nothing in this article shall be construed to affect
3 the right of access to records of complaints, or investigations of
4 complaints, or discipline imposed as a result of those investigations,
5 concerning an event or transaction in which the peace officer,
6 *public officer, as described in Section 830.7, 830.11, or 836.5 of*
7 *the Penal Code*, or custodial officer, as defined in Section 831.5
8 of the Penal Code, participated, or which he or she perceived, and
9 pertaining to the manner in which he or she performed his or her
10 duties, provided that information is relevant to the subject matter
11 involved in the pending litigation.

12 (b) In determining relevance, the court shall examine the
13 information in chambers in conformity with Section 915, and shall
14 exclude from disclosure:

15 (1) Information consisting of complaints concerning conduct
16 occurring more than five years before the event or transaction that
17 is the subject of the litigation in aid of which discovery or
18 disclosure is sought.

19 (2) In any criminal proceeding the conclusions of any officer
20 investigating a complaint filed pursuant to Section 832.5 of the
21 Penal Code.

22 (3) Facts sought to be disclosed that are so remote as to make
23 disclosure of little or no practical benefit.

24 (c) In determining relevance where the issue in litigation
25 concerns the policies or pattern of conduct of the employing
26 agency, the court shall consider whether the information sought
27 may be obtained from other records maintained by the employing
28 agency in the regular course of agency business ~~which~~ *that* would
29 not necessitate the disclosure of individual personnel records.

30 (d) Upon motion seasonably made by the governmental agency
31 ~~which~~ *that* has custody or control of the records to be examined
32 or by the officer whose records are sought, and upon good cause
33 showing the necessity thereof, the court may make any order which
34 justice requires to protect the officer or agency from unnecessary
35 annoyance, embarrassment or oppression.

36 (e) The court shall, in any case or proceeding permitting the
37 disclosure or discovery of any peace, *public*, or custodial officer
38 records requested pursuant to Section 1043, order that the records
39 disclosed or discovered may not be used for any purpose other
40 than a court proceeding pursuant to applicable law.

1 SEC. 3. Section 1046 of the Evidence Code is amended to read:

2 1046. In any case, otherwise authorized by law, in which the
3 party seeking disclosure is alleging excessive force by a peace
4 officer, *public officer, as described in Section 830.7, 830.11, or*
5 *836.5 of the Penal Code*, or custodial officer, as defined in Section
6 831.5 of the Penal Code, in connection with the arrest of that party,
7 or for conduct alleged to have occurred within a jail facility, the
8 motion shall include a copy of the police report setting forth the
9 circumstances under which the party was stopped and arrested, or
10 a copy of the crime report setting forth the circumstances under
11 which the conduct is alleged to have occurred within a jail facility.

12 SEC. 4. Section 1047 of the Evidence Code is amended to read:

13 1047. Records of peace officers, *public officers, as described*
14 *in Section 830.7, 830.11, or 836.5 of the Penal Code*, or custodial
15 officers, as defined in Section 831.5 of the Penal Code, including
16 supervisory officers, who either were not present during the arrest
17 or had no contact with the party seeking disclosure from the time
18 of the arrest until the time of booking, or who were not present at
19 the time the conduct is alleged to have occurred within a jail
20 facility, shall not be subject to disclosure.

21 SEC. 5. Section 832.5 of the Penal Code is amended to read:

22 832.5. (a) (1) Each department or agency in this state that
23 employs peace officers *or public officers, as described in Section*
24 *830.7, 830.11, or 836.5*, shall establish a procedure to investigate
25 complaints by members of the public against the personnel of these
26 departments or agencies, and shall make a written description of
27 the procedure available to the public.

28 (2) Each department or agency that employs custodial officers,
29 as defined in Section 831.5, may establish a procedure to
30 investigate complaints by members of the public against those
31 custodial officers employed by these departments or agencies,
32 provided however, that any procedure so established shall comply
33 with the provisions of this section and with the provisions of
34 Section 832.7.

35 (b) Complaints and any reports or findings relating to these
36 complaints shall be retained for a period of at least five years. All
37 complaints retained pursuant to this subdivision may be maintained
38 either in the peace, *public*, or custodial officer's general personnel
39 file or in a separate file designated by the department or agency
40 as provided by department or agency policy, in accordance with

1 all applicable requirements of law. However, prior to any official
2 determination regarding promotion, transfer, or disciplinary action
3 by an officer's employing department or agency, the complaints
4 described by subdivision (c) shall be removed from the officer's
5 general personnel file and placed in separate file designated by the
6 department or agency, in accordance with all applicable
7 requirements of law.

8 (c) Complaints by members of the public that are determined
9 by the peace, *public*, or custodial officer's employing agency to
10 be frivolous, as defined in Section 128.5 of the Code of Civil
11 Procedure, or unfounded or exonerated, or any portion of a
12 complaint that is determined to be frivolous, unfounded, or
13 exonerated, shall not be maintained in that officer's general
14 personnel file. However, these complaints shall be retained in
15 other, separate files that shall be deemed personnel records for
16 purposes of the California Public Records Act (Chapter 3.5
17 (commencing with Section 6250) of Division 7 of Title 1 of the
18 Government Code) and Section 1043 of the Evidence Code.

19 (1) Management of the peace, *public*, or custodial officer's
20 employing agency shall have access to the files described in this
21 subdivision.

22 (2) Management of the peace, *public*, or custodial officer's
23 employing agency shall not use the complaints contained in these
24 separate files for punitive or promotional purposes except as
25 permitted by subdivision (f) of Section 3304 of the Government
26 Code.

27 (3) Management of the peace, *public*, or custodial officer's
28 employing agency may identify any officer who is subject to the
29 complaints maintained in these files which require counseling or
30 additional training. However, if a complaint is removed from the
31 officer's personnel file, any reference in the personnel file to the
32 complaint or to a separate file shall be deleted.

33 (d) As used in this section, the following definitions apply:

34 (1) "General personnel file" means the file maintained by the
35 agency containing the primary records specific to each peace,
36 *public*, or custodial officer's employment, including evaluations,
37 assignments, status changes, and imposed discipline.

38 (2) "Unfounded" means that the investigation clearly established
39 that the allegation is not true.

1 (3) “Exonerated” means that the investigation clearly established
2 that the actions of the peace, *public*, or custodial officer that formed
3 the basis for the complaint are not violations of law or department
4 policy.

5 SEC. 6. If the Commission on State Mandates determines that
6 this act contains costs mandated by the state, reimbursement to
7 local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.